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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 JEFFREY R. McKEE,

8 Plaintiff,

9 v.

10 LOREN TAYLOR *et al.*,

11 Defendants.

No. C09-5207RJB

ORDER 1) DENYING MOTION FOR
APPOINTMENT OF COUNSEL; 2)
DENYING MOTION FOR DEFAULT
JUDGMENT; 3) DISMISSING
PROPOSED AMENDED COMPLAINT
WITHOUT PREJUDICE

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14 This matter comes before the court on the following: Motion for Appointment of
15 Counsel (Dkt. 44), Motion for Default Judgment (Dkt. 43); Proposed Amended Complaint (Dkt.
16 39). The court is familiar with the records and files herein and all documents filed in support of
17 and in opposition to the two motions.

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19 On this day, the court entered an Order Adopting the Report and Recommendation,
20 which dismissed this case. Therefore, the two motions are moot, and can properly be denied on
21 that basis. In the interest of fairness to the *pro se* plaintiff, however, the court will explain below
22 additional reasons for denial of the motions.

23 The Motion for Appointment of Counsel (Dkt. 44), should be denied also because
24 plaintiff does not present exceptional circumstances, there is no likelihood of success on the
25 merits, and he has shown the ability to articulate his claims *pro se*.
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1 Plaintiff's Motion for Default Judgment (Dkt. 43) should be denied because it is untimely
2 and premature in the face of the motion to dismiss that was the subject of the Report and
3 Recommendation (Dkt. 41).

4 Plaintiff's First Amended Complaint (Dkt. 39) was not timely filed and is not properly
5 before the court. It, accordingly, should be dismissed, but the dismissal should be without
6 prejudice so that if new and different claims are contained therein, they may be brought in a
7 separate case. The claims raised in the original complaint in this matter, however, are dismissed
8 by the Order Adopting the Report and Recommendation with prejudice.
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10 IT IS SO ORDERED.

11 The Clerk is directed to send copies of this Order to plaintiff, counsel for defendants, and
12 to the Hon. J. Richard Creatura.

13 DATED this 1st day of December, 2009.

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16 ROBERT J. BRYAN
17 United States District Judge
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